

**NOT** FOR PUBLICATION IN WEST'S BANKRUPTCY REPORTER:

Decision: Decision re Motion to Dismiss

Case: Shaw Pittman LLP v. Shin (In re Shin), Adversary  
Proceeding No. 04-10070

Decided: September 22, 2004

Attorneys:

Patrick J. Potter and Luis Marini for plaintiff.  
Stephen W. Nichols for defendant.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
PETER C. SHIN,	)	Case No. 02-00357
	)	(Chapter 11)
Debtor.	)	
_____	)	
	)	
SHAW PITTMAN LLP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No.
	)	04-10070
PETER C. SHIN,	)	
	)	
Defendant.	)	

DECISION RE MOTION TO DISMISS

The court will dismiss this adversary proceeding based on lack of subject matter jurisdiction over the claims pressed in Counts I through V of the complaint, and based on lack of standing to pursue the claim in Count VI (which seeks modification of the debtor's confirmed plan) such that the claim is not one upon which relief can be granted.

I

On February 20, 2002, the defendant, Dr. Shin, commenced the bankruptcy case within which this adversary proceeding is being pursued. On March 3, 2004, the court confirmed Dr. Shin's plan under chapter 11 of the Bankruptcy Code.<sup>1</sup> As will be seen, the

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<sup>1</sup> The plan, entitled Third Amended Chapter 11 Plan of Reorganization, is Docket Entry ("DE") No. 171 in the bankruptcy case, Case No. 02-00357. The order confirming that plan is DE No. 178.

claims against Dr. Shin in this adversary proceeding are not provided for by the confirmed plan, such that subject matter jurisdiction necessarily cannot be based on the bankruptcy court's obvious continuing power to adjudicate the amount of claims that are required to be paid under the plan. No other basis for subject matter jurisdiction exists, save as to the claim seeking modification of the confirmed plan and the confirmation order. As will be seen, that claim is not one upon which relief can be granted (as only a plan's proponent can seek modification).

## II

The plaintiff, Shaw Pittman, LLP ("Shaw Pittman") sues Dr. Shin in this adversary proceeding based on events that transpired in the postpetition period and prior to confirmation of Dr. Shin's chapter 11 plan. Accordingly, Shaw Pittman's claims are not prepetition claims required to be paid under the confirmed plan.

Nor are they administrative claims required to be paid under the plan. As discussed below, they are postpetition debts of a personal character. Debts of that type were expressly not to be paid under the plan, and instead passed through the bankruptcy case undischarged and otherwise unaffected by the confirmed

plan,<sup>2</sup> all in conformance with the court's criticisms in In re Shin, 306 B.R. 397, 402-407 (Bankr. D.D.C. 2004), of an earlier version of the plan. Accordingly, Shaw Pittman is free to pursue the claims outside of this bankruptcy case, and the claims have no impact on the administration of the plan.

The complaint alleges that Shaw Pittman is owed fees for legal services it provided in prosecuting a proceeding brought by Dr. Shin's mother and wife to quash a writ of garnishment on bank accounts they owned. The mother and wife say that Dr. Shin never provided them the letter that Shaw Pittman gave to him, as their agent, to transmit to them, in which Shaw Pittman communicated its understanding that they were employing its services in the garnishment litigation, and were to pay Shaw Pittman's fees. They have further stated that Dr. Shin was to be responsible for paying the fees. Based on these allegations, Shaw Pittman seeks

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<sup>2</sup> See Third Amended Chapter 11 Plan of Reorganization, Art. 4.5 (DE No. 171); Order Confirming Third Amended Chapter 11 Plan of Reorganization, ¶ 2 (DE No. 178).

decrees addressing Dr. Shin's responsibility to pay the fees.<sup>3</sup> Regardless of whether the claims have merit, what is plain is that the claims are not based on Dr. Shin's conduct as a debtor-in-possession in administering the estate prior to confirmation re-vesting the estate in him. Rather, they are of a strictly personal nature: his conduct in arranging for Shaw Pittman to represent his mother and wife.

### III

The court plainly has no subject matter jurisdiction over Shaw Pittman's claims (other than the substantively defective request for modification of the debtor's plan). A bankruptcy court's postconfirmation jurisdiction "is limited to matters involving the execution, implementation, or interpretation of the

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<sup>3</sup> Count I of Shaw Pittman's complaint seeks recovery of the fees from Dr. Shin based on his negligence in failing to perform his duties as agent to his mother and wife (that is, by failing to transmit the letter regarding legal representation).

Count II of the complaint seeks recovery based on equitable subrogation, asserting that the mother and wife owe the fees to Shaw Pittman but also possess claims against Dr. Shin for those same fees to which Shaw Pittman is entitled to be equitably subrogated .

Count III asserts that Shaw Pittman is the third-party beneficiary of a contract between Dr. Shin and his mother and wife wherein he agreed to be the primary obligor for Shaw Pittman's fees, and thus Shaw Pittman is entitled to recover the fees from Dr. Shin.

Count IV asserts that Dr. Shin defrauded Shaw Pittman by falsely representing that the fees would be paid by his mother and wife.

Count V seeks a declaratory judgment, in the face of conflicting evidence, as to who was to be responsible for the fees (the mother and wife, or, instead, Dr. Shin).

plan's provisions, and to disputes requiring the application of bankruptcy law." In re Leeds Bldg. Products, Inc., 160 B.R. 689, 691 (Bankr. N.D. Ga. 1993). See also Zerand-Bernal Group, Inc. v. Cox (In re Cary Metal Products, Inc.), 152 B.R. 927, 932 (Bankr. N.D. Ill. 1993) ("Absent an impact upon the administration of the plan of reorganization, creditors have no standing to invoke a bankruptcy court's limited post-confirmation jurisdiction."). The claims asserted against Dr. Shin are not claims to be paid under the confirmed plan and remain unaffected by his discharge. Accordingly, adjudication of those claims is not necessary to administration of the plan.

That the claims arose during the pendency of the bankruptcy case and are against a debtor are insufficient grounds to confer jurisdiction on the bankruptcy court. See Wood v. Wood (In re Wood), 825 F.2d 90, 94 (5th Cir. 1987) ("To fall within the court's jurisdiction, the plaintiffs' claims must affect the estate, not just the debtor."). Cf. Community Bank of Homestead v. Boone (In re Boone), 52 F.3d 958 (11th Cir. 1995) (bankruptcy court had no jurisdiction over claim asserted by debtor that arose postpetition in a chapter 7 case). Even before the plan was confirmed, Shaw Pittman's claims could not have been asserted against the estate. See Shin, 306 B.R. at 404 ("[T]he property of the estate is not the debtor's, and accordingly is not property to which the holders of postpetition non-administrative

claims can look for payment while the case remains in chapter 11: they can obtain no allowed claim against the property of the estate." ). Similarly, once the plan was confirmed, re-vesting the property of the estate in Dr. Shin, the court's jurisdiction, in the case of claims against Dr. Shin, was limited to those that were to be paid under the plan, specifically, those that could have been asserted as claims against the estate during its pendency.

Shaw Pittman responds that the confirmed plan contained language regarding retention of jurisdiction sufficiently broad to encompass this adversary proceeding, and points to decisions indicating that a bankruptcy court retains jurisdiction to the extent provided by the confirmed plan. However, a bankruptcy court can retain subject matter jurisdiction under a confirmed plan only to the extent that such jurisdiction exists. "[I]f a court lacks jurisdiction over a dispute, it cannot create that jurisdiction by simply stating it has jurisdiction in a confirmation or other order." Binder v. Price Waterhouse & Co., LLP (In re Resorts International, Inc.), 372 F.3d 154, 161 (3rd Cir. 2004) (citations omitted).

#### IV

The remaining claim seeks relief under the Bankruptcy Code, but Shaw Pittman lacks standing to pursue the claim. Count VI of the complaint seeks modification of the confirmed plan and the

confirmation order consistent with the relief sought in the complaint. However, under 11 U.S.C. § 1127(b) only a proponent of a confirmed plan may seek to modify the plan.<sup>4</sup>

To the extent that Shaw Pittman seeks revocation of the plan, not modification, the complaint includes no allegations that the confirmation order was procured by fraud, a necessary allegation when revocation is sought. See 11 U.S.C. § 1144 ("the court may revoke such order if and only if such order was procured by fraud"). Fraud in obtaining Shaw Pittman's services for his mother and wife has nothing to do with procuring confirmation of Dr. Shin's chapter 11 plan. Moreover, as Dr. Shin concedes, these are non-administrative claims unaffected by the confirmation of the plan, with Shaw Pittman free to pursue the claims in a forum other than the bankruptcy court. The confirmation of the plan accordingly could not have effected any fraud on Shaw Pittman.

## V

The court will thus dismiss the claims asserted in Counts I through V of Shaw Pittman's complaint for lack of subject matter jurisdiction. The court will dismiss Count VI of the complaint

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<sup>4</sup> Moreover, § 1127 provides that the modification must be made prior to substantial consummation of the plan, a term defined by 11 U.S.C. § 1101. Shaw Pittman has not contested Dr. Shin's representation that the plan has been substantially consummated.



for lack of standing, such that the claim is not one upon which relief can be granted.

Dated: September 22, 2004.

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S. Martin Teel, Jr.  
United States Bankruptcy Judge

Copies to:

All counsel of record